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Legal Origin Theory [book review]

Elena Dana Neacsu

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Legal Origin Theory. Edited by Simon Deakin and Katharina Pistor. Cheltenham, UK; Northampton, MA: Edward Elgar Publishing, 2012. Pp. v, 622. ISBN: 978-0-85793-909-8. UK£185.00; US\$315.00.

In this volume, Simon Deakin, Professor of Law at the University of Cambridge and Katharina Pistor, the Michael I Sovern Professor of Law at Columbia Law School, considered the merits of Legal Origin Theory (LOT) in three fields of inquiry: the study of comparative law, the analysis of the relation between law and markets, and the understanding of the role of legal systems in social ordering. In their succinct and provocative introduction, Deakin and Pistor discuss the evolution of this legal theory without shying away from its controversial nature.

The 17 contributions, which range in date from 1936 to 2011, show the fortitude, if not the relevance, of this theory. The academic quality of each contribution shows it is worth investigating.

To clarify the terminology, roughly speaking legal origin theory is a theoretical hybrid that purports to be able to explain why some nations are richer than others. It does so by connecting the strength of financial markets and the structure of corporate ownership to the legal origin of domestic (national) legal (civil or common law) systems. However, LOT is not as simplistic as comparing these two legal systems. LOT does more than enable the scholar to argue that one system is more suited for market stability, an exercise as scientific as, let's say, horse betting. As Columbia Law Professor David Pozen explained almost a decade ago,⁵ during this century, LOT represented the bread and butter of comparative law and economics.

LOT enables comparative legal and economic studies because of the demonstrated interconnection between legal reform and economic output. A country's legal system does affect that country's institutional and economic development. Think no further than Stalin-Soviet Russia and Putin-style capitalist Russia. The authors featured in this volume, Rafael La Porta, Florencio Lopez-de-Silanes, and Andrei Shleifer, convincingly argue from a comparative and a law and economics point of view that common law seems to be a driver of good government from a shareholder perspective, because, *inter alia*, it

⁵ David E. Pozen, *The Regulation of Labor and the Relevance of Legal Origin*, 28 Comp. Lab. L. & Pol'y J. 43 (2006).

allows for lower barriers to business formation (Djankov), and better protection of shareholders (La Porta). Similarly convincing are the other articles that deal with the third field of inquiry the connection between law and social ordering.

This volume is a thorough presentation of LOT for both the neophyte and the sophisticated LOT scholar. As a non-LOT scholar, I would note that this volume wants to be an objective presentation of the theory and it lacks any critical perspective. In the post-2008 climate, law and economics would seem to need a boost of credibility. Nothing in the collection and little in the LOT scholarship talks about the best legal system to minimize economic crashes for the masses. If the comparative purpose of LOT is to strengthen shareholders rights across national borders, then LOT has achieved its goal and its new phase should be implementing common law systems everywhere. However, in the new social and economic order where the gap between the middle class, the pylon of any capitalist system, and the top 1%, the pylon of oligarchic Russia, which scarily enough seems to have infiltrated the social hierarchy of today's USA, too, perhaps LOT should focus on other issues that go beyond the well-being of the few or their definition of market stability. Market stability is cyclical. The point is how to deal with each inevitable crisis and minimize the impact market crises have on the vast majority of humanity across all borders. I know I would applaud such a theoretical endeavor.

Dana Neacsu

Librarian III & Lecturer-in-Law
Columbia Law School Library
New York, NY USA

On Constitutional Disobedience. By Louis Michael Seidman. Oxford; New York: Oxford University Press, 2012. Pp. ix, 162. ISBN: 978-0-19-989827-5. US\$21.95.

This is the twelfth monograph in Oxford University Press' *Inalienable Rights* series. Previous volumes have engaged in some manner the challenges of constitutional interpretation: How did the "public" in the eighteenth century understand the text of the Constitution? How do we keep faith with its original meaning? Can the notion of a "living Constitution" coexist with the idea of original intent? As the series editor, Geoffrey R. Stone notes, Seidman's⁶ *On Constitutional Disobedience* asks a more radical question: "Why should we care at all what the Constitution says?" Seidman's answer is that we *should not care*. Indeed, he argues, we *don't care* as much as we think we do.

⁶ Louis Michael Seidman is the Carmack Waterhouse Professor of Constitutional Law at Georgetown University.